

34A-2-106 Injuries or death caused by wrongful acts of persons other than employer, officer, agent, or employee of employer -- Rights of employer or insurance carrier in cause of action -- Maintenance of action -- Notice of intention to proceed against third party -- Right to maintain action not involving employee-employer relationship -- Disbursement of proceeds of recovery -- Exclusive remedy.

- (1) When any injury or death for which compensation is payable under this chapter or Chapter 3, Utah Occupational Disease Act is caused by the wrongful act or neglect of a person other than an employer, officer, agent, or employee of the employer:
 - (a) the injured employee, or in case of death, the employee's dependents, may claim compensation; and
 - (b) the injured employee or the employee's heirs or personal representative may have an action for damages against the third person.
- (2)
 - (a) If compensation is claimed and the employer or insurance carrier becomes obligated to pay compensation, the employer or insurance carrier:
 - (i) shall become trustee of the cause of action against the third party; and
 - (ii) may bring and maintain the action either in its own name or in the name of the injured employee, or the employee's heirs or the personal representative of the deceased.
 - (b) Notwithstanding Subsection (2)(a), an employer or insurance carrier may not settle and release a cause of action of which it is a trustee under Subsection (2)(a) without the consent of the commission.
- (3)
 - (a) Before proceeding against a third party, to give a person described in Subsections (3)(a)(i) and (ii) a reasonable opportunity to enter an appearance in the proceeding, the injured employee or, in case of death, the employee's heirs, shall give written notice of the intention to bring an action against the third party to:
 - (i) the carrier; and
 - (ii) any other person obligated for the compensation payments.
 - (b) The injured employee, or, in case of death, the employee's heirs, shall give written notice to the carrier and other person obligated for the compensation payments of any known attempt to attribute fault to the employer, officer, agent, or employee of the employer:
 - (i) by way of settlement; or
 - (ii) in a proceeding brought by the injured employee, or, in case of death, the employee's heirs.
- (4) For the purposes of this section and notwithstanding Section 34A-2-103, the injured employee or the employee's heirs or personal representative may also maintain an action for damages against any of the following persons who do not occupy an employee-employer relationship with the injured or deceased employee at the time of the employee's injury or death:
 - (a) a subcontractor;
 - (b) a general contractor;
 - (c) an independent contractor;
 - (d) a property owner; or
 - (e) a lessee or assignee of a property owner.
- (5) If any recovery is obtained against a third person, it shall be disbursed in accordance with Subsections (5)(a) through (c).
 - (a) The reasonable expense of the action, including attorney fees, shall be paid and charged proportionately against the parties as their interests may appear. Any fee chargeable to the employer or carrier is to be a credit upon any fee payable by the injured employee or, in the case of death, by the dependents, for any recovery had against the third party.

- (b) The person liable for compensation payments shall be reimbursed, less the proportionate share of costs and attorney fees provided for in Subsection (5)(a), for the payments made as follows:
 - (i) without reduction based on fault attributed to the employer, officer, agent, or employee of the employer in the action against the third party if the combined percentage of fault attributed to persons immune from suit is determined to be less than 40% prior to any reallocation of fault under Subsection 78B-5-819(2); or
 - (ii) less the amount of payments made multiplied by the percentage of fault attributed to the employer, officer, agent, or employee of the employer in the action against the third party if the combined percentage of fault attributed to persons immune from suit is determined to be 40% or more prior to any reallocation of fault under Subsection 78B-5-819(2).
- (c) The balance shall be paid to the injured employee, or the employee's heirs in case of death, to be applied to reduce or satisfy in full any obligation thereafter accruing against the person liable for compensation.
- (6) The apportionment of fault to the employer in a civil action against a third party is not an action at law and does not impose any liability on the employer. The apportionment of fault does not alter or diminish the exclusiveness of the remedy provided to employees, their heirs, or personal representatives, or the immunity provided employers pursuant to Section 34A-2-105 or 34A-3-102 for injuries sustained by an employee, whether resulting in death or not. Any court in which a civil action is pending shall issue a partial summary judgment to an employer with respect to the employer's immunity as provided in Section 34A-2-105 or 34A-3-102, even though the conduct of the employer may be considered in allocating fault to the employer in a third party action in the manner provided in Sections 78B-5-817 through 78B-5-823.

Amended by Chapter 3, 2008 General Session